



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080043

Petitioner, Gingermax LLC, represented by Charles Silbert, manager/owner, applied to the Building Commissioner for permission to construct a garage and deck at 57 Upland Road. The application was denied and an appeal was taken to this Board.

On 9 October 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 20 November 2008, at 7:15 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 30 October and 6 November 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **GINGERMAX LLC**
Location of Premises: **57 UPLAND ROAD BRKL**
Date of Hearing: **11/20/2008**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Main Library, 2nd. floor**

A public hearing will be held for a variance and/or special permit from:

5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.

5.63; Accessory Structures in Side yards, Variance required (garage setback less than 6').

5.72; Accessory Buildings or Structures in Rear Yards, Variance required (garage setback less than 6')

6.04.5.c.2; Design of All Off-Street Parking Facilities (driveway setback)

8.02.2; Alteration or Extension, Special Permit Required. (rear setback, existing structure) of the Zoning By-Law to construct a garage and deck per plans at 57 UPLAND ROAD BRKL.

Said Premise located in a **S-10** (single family) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar

at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Kathryn Ham and Mark Allen. The petitioner, Gingermax LLC, was represented by its Manager/owner, Charles Silbert, of 17 Orchard Avenue, Acton, MA 01720.

Mr. Silbert described the property at 57 Upland Street as a 2.5 story colonial single-family home that was built in 1890. The home is clad in brick with an asphalt shingled roof, and is located in the Pill Hill Historic District on Philbrick Square. 57 Upland Road is surrounded by a mix of eclectic homes, several of which, including the neighboring lot, have similar small garages near the rear lot lines. 57 Upland

Road and 51 Upland Road have driveways that are separated by a narrow landscaped strip. He said that he is seeking to improve the non-conforming nature of the existing parking/driveway. He said that the existing retaining wall which is built of landscape timbers and concrete will be moved away from the lot line, closer to the house. The driveway which is non-conforming as to setback, will also be moved closer to the house thereby removing existing asphalt which is in very close proximity to the neighbor's beech trees.

Mr. Silbert said he proposes to construct a detached one-story garage in the rear yard. The garage is within 3' of the rear yard lot line, and 3' from the side yard lot line. He previously proposed a garage located 4'6" from the lot line and built on an angle, but several of the neighbors prefer this configuration as it has less impact on light. The height of the proposed garage is 13'11^{3/8"} and it will be constructed of noncombustible hardy plank, stucco, with asphalt shingles on the roof.

The petitioner said he is also proposing to replace and construct the new retaining wall between the house and the driveway and is restoring the house as a counterbalancing amenities. The new wall was discussed and approved by the Preservation Commission on November 13, 2008. He said that the retaining wall will be constructed of New England stone with an iron railing above. The wall will range from 18" to 36" in height and Mr. Silbert stated it will be much more attractive for the neighbors.

Mr. Silbert closed by stating he believed he needed relief from **Section 5.43** of the Zoning By-law to waive dimensional requirements (setback) provided counterbalancing amenities were provided and **Section 8.02** of the Zoning By-Law as he is altering a pre-existing, non-conforming structure.

The Chairman asked whether any Board members had any questions. Mr. Allen asked about how the current non-conforming driveway was to be enhanced to contribute as a counterbalancing amenity. Mr. Silbert reiterated that he was moving the driveway farther from the lot line and building the new retaining wall of fieldstone which is closer to his house than the original wall. Mr. Silbert also

mentioned that he considered the restorative work on the exterior of the home a counterbalancing amenity as well. He said that the home was in considerable disrepair and he is restoring the exterior to as close to original as possible to include new wood gutters and copper flashing. Mr. Allen asked the Building Commissioner about Building Code issues relative to the proximity of the new garage to the lot line. Mr. Shepard said that the Building Code does cover this issue and requires certain protections not only for the structure but for its neighboring structures as well. Mr. Shepard said he has discussed this with the petitioner and Mr. Silbert understood the implications as to method of construction. The Building Commissioner advised Mr. Allen that he will assure that the requirements are met. Mr. Geller asked about neighbor, Chris Beasley's concern regarding drainage/erosion. Mr. Silbert explained that due to neighbor concerns he was keeping the existing driveway at the existing grade (avoiding subsurface excavation) and moving its location farther away from the roots of the neighbor's trees to minimize erosion concerns and disturbance. He said a dry well on the property will accommodate storm water from the driveway and new downspouts installed on the house will be tied into the dry well, vastly improving storm water drainage on site. Mr. Silbert opined that the neighbor's initial concern was about the retaining wall as it was originally planned to be much closer to their property line. Mr. Silbert stated that Mr. Beasley seemed satisfied with the proposal.

The Chairman asked whether anyone in attendance wished to speak in favor or against the proposal. Mrs. Margaret Connell of 18 Maple Street, an abutter to the rear, stated she was not sure whether she was in favor or opposed to the proposal. She said she had maintained property to the rear of 57 Upland Road as her own for many years. She was initially concerned that trees may be removed but she currently is entering into a private easement agreement with the petitioner to protect the subject trees.

Courtney Starling, planner, provided the finding of the Planning Department.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.63 – Accessory Structures in Side Yards

Section 5.72 – Accessory Buildings or Structures in Rear Yards

Section 6.04.5.c.2 – Design of All Off-street Parking Facilities

Proposed Garage	Required	Proposed	Existing	Relief
Side Yard Setback	6'	3'	n/a	S.P./Variance*
Rear Yard Setback	6'	3'	n/a	S.P./Variance*
Proposed Driveway	Required	Proposed	Existing	Relief
Side Yard Setback	5'	0'-3'	0'	S.P./Variance*

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant has indicated he is replacing the retaining wall, creating a more conforming driveway and additional parking, and is renovating and restoring a historic property as counterbalancing amenities.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming condition.

Ms. Starling said that the Planning Board was supportive of this application. The garage is attractively designed, will be largely screened from the street by the house and the slope of the driveway, and is positioned similar to the garage on the neighboring property. The Planning Board was pleased that the applicant was working with abutters to create a suitable plan that minimizes the impacts on the neighbors. She said that the Board had some concern about drainage and would like the applicant to explore permeable pavements or install a berm between his driveway and the neighboring driveway. The Board voted to recommend approval of the plans titled, “Silbert Upland Road Residence” dated 8/15/08, partially revised 11/3/08, and prepared by Khalsa Design Incorporated, subject to the following conditions:

- 1. Prior to the issuance of a building permit, a final site and landscaping plan indicating any trees that will be removed and any new plantings that will be installed shall be submitted to the Assistant Director of Regulatory Planning subject to the review and approval.**
- 2. Prior to the issuance of a building permit, final elevations of the garage and detailed dimensions of the retaining wall shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:**

1) a final site plan showing any regrading, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the retaining walls, stamped and signed by a registered engineer or architect, and approved by the Historic Preservation Commission; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the petitioner, Mr. Silbert has done a good job on all his projects. Mr. Shepard said that the home was in poor condition before it was purchased by Mr. Silbert and was in need of a thorough renovation. Mr. Shepard assured the Board that he will insure that all the requirements of the Building Code including fire separation are met. He said that the Building Department is supportive of the project, as well as the recommended conditions of the Planning Board.

During deliberations, Mr. Allen requested that the conditions be amended to include “natural” fieldstone retaining walls. Also, he said a drainage plan should be included to detail those measures undertaken to ameliorate potential drainage issues. Kathryn Ham said that she was satisfied that the counterbalancing amenities offset the relief requested to her satisfaction.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements of the following Sections of the Zoning By-Law have been satisfied and that it is desirable to grant a Special Permit in accordance with **Section 5.43**, waiver of certain dimensional requirements conditioned on provision of the counterbalancing amenities hereinbelow provided, and **Section 8.02.2**, alteration or extension of a pre-existing, non-conforming structure, of the Zoning By-law and makes the following specific findings pursuant to **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, a final site and landscaping plan indicating any trees that will be removed and any new plantings that will be installed shall be submitted to the Assistant Director of Regulatory Planning subject to the review and approval.
2. Prior to the issuance of a building permit, final elevations of the garage, detailed dimensions of the retaining wall, and an appropriate drainage system plan including downspouts installed and permeable surface of the driveway or portions thereof directing storm water drainage to the drywell on site and a berm to retain storm water on the property, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing any regrading, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the natural fieldstone retaining walls, stamped and signed by a registered engineer or architect, and approved by the Historic Preservation Commission; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of

The Board of Appeals


Filing Date: December 5, 2008

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Jesse Geller, Chairman

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

08 DEC -5 AM 8:30